

**SUMTER COUNTY BOARD OF COMMISSIONERS  
EXECUTIVE SUMMARY**

**SUBJECT:**      **Landstone Development of Regional Impact – Impact Fee Credit Agreement for Proportionate Share Contributions Associated with C-470 Widening from CR 501 to Sumter County Line (Staff recommends approval).**

---

**REQUESTED ACTION:**      Approve Agreement.

☐ Work Session (Report Only)      **DATE OF MEETING:**      9/27/2011  
☒ Regular Meeting      ☐ Special Meeting

**CONTRACT:**      ☒ N/A      Vendor/Entity: \_\_\_\_\_  
Effective Date:      Termination Date: \_\_\_\_\_  
Managing Division / Dept:      Planning

**BUDGET IMPACT:**      Maximum Impact \$23,206,753  
☐ Annual      **FUNDING SOURCE:**      Road Impact Fees Collected from Landstone DRI  
☒ Capital      **EXPENDITURE ACCOUNT:**      \_\_\_\_\_  
☐ N/A

---

**HISTORY/FACTS/ISSUES:**

The Landstone Development of Regional Impact (DRI) is a proposed large-scale mixed use project within the City of Wildwood. The DRI is located on the south side of C-470 at CR 501.

The Transportation Proportionate Share Agreement for the DRI provides the opportunity for the Developer to enter into a transportation impact fee agreement with the County to provide for either credits or reimbursement for the costs of widening C-470 from CR 501 to the Sumter County line. The attached “Impact Fee Credit Agreement for Proportionate Share Contributions for Development of County Road 470” (Agreement) is consistent with the intent of the Transportation Proportionate Share Agreement.

The projected cost for the C-470 project is \$19,338,961. The proposed Agreement allows the cost to increase up to 120% if the project is not competitively bid. Given this potential escalation, the maximum impact fee credit or reimbursement is \$23,206,753.

The Agreement provides for a maximum impact fee credit to not exceed the total value of all transportation impact fees generated by the full build-out of the DRI. Based on current impact fee rates, the anticipated total value of all transportation impact fees generated by the DRI is \$23,916,945. This is shown in the table below:

**Potential Road Impact Fee Balance**  
**Landstone Development of Regional Impact**  
**Impact Fees Generated Through Buildout**

Use (ITE Code)	Units	Rate		Potential Revenue
Single-Family Residential (210)	6,450	\$2,600	per du	\$16,770,000
Condominium/Townhouse (230)	1,075	\$2,006	per du	\$2,156,450
Multi-Family (220)	500	\$1,779	per du	\$889,500
Total Residential				\$19,815,950
Commercial/Retail (820)	652,500	\$3.637	per sq ft	\$2,373,143
General Office (710)	150,000	\$3.269	per sq ft	\$490,350
Warehouse/Industrial (150)	500,000	\$1.124	per sq ft	\$562,000
Hotel/Motel (310)	250	\$1,828	per room	\$457,000
Golf Course (430)	18	\$9,853	per hole	\$177,354
Regional Park (417)	81	\$508	per acre	\$41,148
Mine (NA)	280	NA	NA	NA
Total Non-Residential				\$4,100,995
<b>Potential Total Phase I Road Impact Fees</b>				<b>\$23,916,945</b>

Impact Fee Potential Revenue	\$23,916,945	120% of Cost
Impact Fee Potential Expense	\$19,338,961	\$23,206,753.20
<b>Surplus/(Deficit)</b>	<b>\$4,577,984</b>	<b>\$710,191</b>

Impact Fee Potential Expense is Estimated Cost for Widening of C-470 from CR 501 to County-line.

Land use allocation based on land use breakdown from "Updated Transportation Analysis  
Landstone Communities DRI - March 25, 2010" prepared by Traffic Planning and Design, Inc.

Mine - At this time the County does not have a calculated rate for limerock mine. Rate  
would be calculated at time of permitting for limerock mine.

The potential transportation impact fee revenue generation by the DRI (\$23,916,945) exceeds the  
maximum County obligation (\$23,206,753) under the proposed Agreement.

The Agreement is consistent with the County's transportation impact fee ordinance. In addition, the  
Agreement was reviewed by the County Attorney with no objection.

Staff recommends approval of the Agreement.

**IMPACT FEE CREDIT AGREEMENT  
FOR PROPORTIONATE SHARE CONTRIBUTIONS  
FOR DEVELOPMENT OF COUNTY ROAD 470**

**THIS AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **LANDSTONE-WRIGHT, LLC**, a Delaware limited liability company, doing business at 12011 San Vicente Blvd., Suite 350, Los Angeles, California 90049 (hereinafter called "Owner/Developer/Owner"). **TML OF MARION, LLC**, a Florida limited liability company, f/k/a Tony Mendola, LLC, a Florida limited liability company, with a mailing address of P.O. Box 3988, Ocala, FL 34478 (hereinafter called "TML"), and **SUMTER COUNTY**, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, FL 34785 (hereinafter called "County").

**RECITALS**

**WHEREAS**, the Owner/Developer and TML are the owners of the Landstone Communities Development of Regional Impact ("DRI") located in the City of Wildwood, Florida (the "City"), as further described by the Development Order for the DRI approved by the City in October 2007, and the Amended and Restated Development Order ("ARDO") for the DRI approved by the City on December 13, 2010, (collectively, the "Development Order"); and

**WHEREAS**, pursuant to the Development Order, the Owner/Developer, the County, the City, Lake County, and the Florida Department of Transportation ("FDOT") entered into the Landstone Communities Development of Regional Impact Transportation Proportionate Share Agreement for County Road 470 ("Proportionate Share Agreement"), which sets forth the terms and conditions for the design and construction of improvements to County Road 470 ("CR 470") with the cost to be funded by the Owner/Developer, which is incorporated herein by reference; and

**WHEREAS**, the Proportionate Share Agreement sets forth the timing and extent of contributions to be made by the Owner/Developer toward the improvement of affected transportation facilities, including the improvement of CR 470 from County Road 501 to the Sumter/Lake County line (the "CR 470 Improvements", as such term is defined in the Proportionate Share Agreement); and

**WHEREAS**, Section 12 of the Proportionate Share Agreement also sets forth Owner/Developer's entitlement to impact fee credits for such contributions, pursuant to Section 380.06(16), Fla. Stat.; and

**WHEREAS**, it is the intent and understanding of the parties that road impact fee credits or reimbursements shall be sufficient to cover eligible transportation proportionate share costs for the DRI; and

**WHEREAS**, the County finds that Owner/Developer is entitled to receive impact fee credits and/or cash reimbursement for such contributions and that such contributions are consistent with the County's Comprehensive Plan, are an integral part of and a reasonably necessary accommodation of contemplated Off-Site Improvements to Designated County Roads and excludes Access Improvements, as those terms are defined in Article III of the County's Land Development Code, and the proposed funding and/or construction time schedule is consistent with the County's transportation work schedule; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth their duties and obligations for such contributions, and the impact fee credits and/or reimbursement to which the Owner/Developer will be entitled.

**NOW THEREFORE**, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is acknowledged by both parties and the mutual terms, covenants and conditions to be complied with on the part of the parties hereto, the parties do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. **IMPACT FEE CREDIT AND REIMBURSEMENT**

A. **Dedication of Right Of Way.**

(i) Property Owned by the Owner/Developer. Owner/Developer agrees to convey to the County the right-of-way currently (i.e., as of the date of this Agreement) owned by the Owner/Developer or City of Wildwood and required for the improvement of CR 470, as that term is defined in the Proportionate Share Agreement, without impact fee credit.

(ii) Additional Right-of-Way to be Acquired. To the extent that additional right-of-way is required for construction of the CR 470 Improvements beyond the land described in Section 2.A.(i) above, the County shall be responsible for acquiring such right-of-way, within the jurisdiction of the County. The Owner/Developer shall have no obligations hereunder until all right-of-way necessary for the CR 470 Improvements has been acquired.

B. **Reimbursement for the CR 470 Improvements.**

(i) Amount of Reimbursement. The County agrees that the Owner/Developer shall be entitled to reimbursement in the form of impact fee credits and/or cash as set forth herein based upon the actual cost of designing, permitting and constructing the CR 470 Improvements and any related costs, including, but not limited to, utilities relocation, purchase and installation of traffic signals, construction management and inspection, surveying, soils and material testing, and soil remediation costs; however, in no event shall the Owner/Developer be entitled to any credit and/or reimbursement in excess of 120% of the estimated costs set forth in *Exhibit "A,"* unless and to the extent the Project is competitively bid, in which case the Owner/Developer shall be entitled to impact fee credit and/or reimbursement

in the amount of the actual cost of constructing the Project. The parties agree that Exhibit "A" excludes costs to acquire additional right-of-way, relocate utilities, remediate contaminated soils, and other unknown costs that may be necessary to complete construction of the CR 470 Improvements, and that Owner/Developer shall be reimbursed based on the actual value of such costs incurred by Owner/Developer, if any, regardless of Exhibit "A." It is further agreed that Owner/Developer shall not be entitled to reimbursement/credit in excess of the amount of road impact fees to be generated over the life of the DRI; provided, however, in the event there is a decrease, termination or moratorium on road impact fee rates after the effective date of this Agreement, then Owner/Developer shall be entitled to either, at Owner/Developer's option, cash reimbursement or impact fee credits up to the amount of impact fees that would have been collected over the life of the DRI in the absence of such decrease, termination or moratorium.

(ii) Method of Reimbursement. All road impact fees in the County's impact fee trust account shall be available for cash reimbursement to Owner/Developer in accordance with this Agreement. Except as otherwise provided in Section 2.B.(i.) above, the Owner/Developer shall be reimbursed by the County based upon the percentage of the CR 470 Improvements' work completed by Owner/Developer or Owner/Developer's contractor by delivering to the County a certification by the Owner/Developer's engineer indicating the percentage of work completed through the date of certification, which reimbursement shall be available to the Owner/Developer upon inspection, approval and acceptance of such certification by the County (not to be unreasonably withheld, conditioned or delayed). The Owner/Developer shall have the option of being reimbursed in impact fee credits to the extent that insufficient cash is available to reimburse Owner/Developer in full at the time such application is made, or Owner/Developer may choose to be reimbursed in cash when it becomes available. The amount of reimbursement owing to Owner/Developer shall be based upon the value of the CR 470 Improvements in accordance with the above. The Owner/Developer shall pay road impact fees pursuant to County ordinance except and to the extent that Owner/Developer is entitled to impact fee credits and Owner/Developer elects to utilize such credits. Impact fee credits made available to the Owner/Developer shall be fully transferable and assignable by Owner/Developer in accordance with this Agreement. The Owner/Developer shall keep records which concern or reflect the total cost of the CR 470 Improvements. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection or copying, for a minimum of five (5) years from the termination of this Agreement. If a surety bond, letter of credit or cash is posted by the Owner/Developer pursuant to the Proportionate Share Agreement and the County uses the proceeds of the surety bond, letter of credit or cash to construct the CR 470 Improvements, then the Owner/Developer shall be entitled to road impact fee credits or reimbursements as described above. However, it is not the County's intent to utilize the proceeds of the surety bond, letter of credit or cash for construction but used simply as a financial guarantee of completion of the CR 470 Improvements by the Owner/Developer.

C. Assignment of Impact Fee Credits by the Owner/Developer. Any impact fee credits granted to Owner/Developer shall be freely assignable by the Owner/Developer, its successors and/or assigns, without limitation on the number of such credits that may be assigned and transferred from one entity to the next or the number of times such credits may be transferred. Any such assignment of impact fee credits shall be evidenced in writing and signed by the Assignee or holder of the impact fee credits and a copy of such assignment shall be provided to the County.

D. **Annual Review and Audit.** The County shall conduct an annual review and audit of performance under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement and to report the credit applied toward payment of road impact fees and the balance of available and unused credit. If the Board finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, this Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Owner/Developer written notice with reasonable time in which to cure any alleged failure.

3. **COMMUNITY DEVELOPMENT DISTRICT.** Any or all of Owner/Developer's funding and/or construction-related obligations set forth in this Agreement may be performed by a community development district created for the DRI pursuant to Chapter 190, Fla. Stat. In addition, and without limiting the foregoing, the Owner/Developer may perform any financial and/or construction-related obligation herein and be reimbursed by a community development district created for the DRI pursuant to Chapter 190, Florida Statutes. To the extent that any such contribution or construction-related activity is paid for by or (in the case of advancing impact fee credits) is secured by a community development district, then impact fee credits and/or reimbursement, as applicable, shall be granted in the name of such community development district and shall be subject to the same terms and conditions set forth herein as if they were granted to Owner/Developer.

4. **FUTURE ESTABLISHMENT OF MUNICIPAL SERVICE TAXING UNIT OR MUNICIPAL SERVICE BENEFIT UNIT.** If at the request of the City of Wildwood ("City") a Municipal Service Taxing Unit (MSTU) or Municipal Service Benefit Unit (MSBU), pursuant to Florida Statutes and the Interlocal Service Boundary Agreement, dated April 29, 2009, as amended, ("ISBA") between the City and County, is established to fund the CR 470 Improvements, then the Owner/Developer may enter into a separate agreement with the City, at the City's full discretion and option, to obtain reimbursement for expenses related to the CR 470 Improvements not reimbursed or credited through this Agreement.

5. **NOTICES.** Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the parties as follows:

**COUNTY:**

Sumter County  
Attn: Bradley Arnold,  
County Administrator  
7375 Powell Road  
Wildwood, FL 34785

**OWNER/DEVELOPER:**

Landstone-Wright, LLC  
Attn: Albert Z. Praw  
12011 San Vicente Blvd., Suite 350  
Los Angeles, CA 90049

**Copy to:**

George Angeliadis, Esq.  
The Hogan Law Firm  
Post Office Box 485  
Brooksville, Florida 34605

**Copy to:**

Cecelia Bonifay, Esq.  
Akerman Senterfitt  
420 South Orange Avenue, 12<sup>th</sup> Floor  
Orlando, FL 32801

**TML:**

TML of Marion, LLC  
Tony Mendola, LLC  
Attn: Albert Peek  
PO Box 3988  
Ocala, FL 34478

**Copy to:**

Hearthstone  
Hearthstone  
Attn: Tracy Carver, Esq.  
General Counsel  
300 Drake's Landing Rd, Suite 269  
Greenbrae, CA 94904

**Copy to:**

W. James Gooding III, Esq.  
Gilligan, King, Gooding & Gifford, P.A.  
1531 SE 36<sup>th</sup> Ave.  
Ocala, FL 34471

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of addresses is effective only upon receipt.

6. **Concurrency and Related Fees.** In the event the County adopts a transportation concurrency fee, a "mobility fee," or an equivalent transportation fee, in lieu of, or in addition to, road impact fees, Owner/Developer shall be entitled to receive credits against, and reimbursement from, such fee to the same extent as it is entitled to such credits against, or reimbursement from, road impact fees.

7. **Successors.** This Agreement shall bind and inure to the benefit of the parties, their successors in interest and assigns. Other than the ARDO and the Proportionate Share Agreement, no prior or present agreements or representations shall be binding on the parties hereto unless included in this Agreement. No subsequent agreement shall be valid or binding upon the parties unless in writing and executed by the party immediately bound by it. In any litigation arising out of this Agreement, each party shall be responsible for its attorney's fees and costs.

8. **Force Majeure.** In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Acts of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, then such party shall not be liable for damages to the other party as a result of such non-performance. Notwithstanding the above, both parties agree to take no action that would prevent the intended operation of this Agreement.

9. **Amendment.** This Agreement may be amended by mutual written agreement of the parties where such amendment is duly executed with the same formalities as this Agreement.

(The remainder of this page is intentionally left blank.)



**IN WITNESS WHEREOF**, the parties have duly executed this Agreement on the day and year above first written.

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
SUMTER COUNTY, FLORIDA**

\_\_\_\_\_  
Gloria Hayward, Clerk of the Court

\_\_\_\_\_  
Don Burgess, Chairman

Approved as to Form  
and Legal Sufficiency

\_\_\_\_\_  
Sumter County Attorney

**ATTEST:**

**LANDSTONE-WRIGHT, LLC**, a Delaware  
limited liability company

By:   Hearthstone Path of Growth Fund LLC,  
a Delaware limited liability company, Member

By:   Hearthstone Professionals XII, LP, a  
California limited partnership, Managing  
Member

By:   Hearthstone, Inc., a California  
corporation, General Partner

By: \_\_\_\_\_  
Charles Schetter, President

By: \_\_\_\_\_

By:   Landstone Communities, LLC, a Delaware  
limited liability company, Member

By: \_\_\_\_\_

By: \_\_\_\_\_  
Albert Z. Praw, Chief Executive Officer

**ATTEST:**

**TML OF MARION, LLC**, a Florida limited liability company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

As Its: \_\_\_\_\_

(The remainder of this page is intentionally left blank.)

**EXHIBIT "A"**

<u>Roadway</u>	<u>Segment</u>	<u>Improvement</u>
C-470	CR 501 to County Line	Widen to 4 lanes
Construction	\$13,692,171	
ROW	\$2,202,296	
Engineering	\$2,053,826	
CEI	\$1,369,217	
Wetland	\$21,451	
<b>Total Cost</b>	<b>\$19,338,961</b>	

(The remainder of this page is intentionally left blank.)